DECEMBER 6, 1958

THE

SOLICITORS' JOURNAL

VOLUME 102

NUMBER 49

CURRENT TOPICS

The Wolfenden Debate

IT is easier to criticise the Government for dithering and sheltering behind public opinion than to suggest in detail what changes they should propose in the law relating to homosexuality and prostitution. We accept that homosexual practices are something more than a matter of private morality and that they are biologically wrong: it does not follow that when consenting adults engage in them they should come within the ambit of the criminal law. For example, Lesbian practices are not crimes, and it has never been seriously suggested that it would do any good to make them criminal. If, as several speakers in last week's debate suggested, the removal of the sanctions of the criminal law would result in the spread of homosexual practices to those who do not now indulge in them, the Government are right to hesitate. If, however, this risk is not substantial (and on this there is no exact proof), the Government are wrong not to give a lead, the effect of which might well be to free many thousands of men from unhappiness and persuade them to seek help. It would be foolish to claim that every homosexual can be helped medically but a large number can; we must wait and see what Mr. DAVID RENTON meant when he said that the Government would consider what they could do for the homosexuals who could not help themselves but who could be helped, but we doubt whether it is possible to give much substantial help while the law stays as it is. It seems curious that having appointed a strong committee to investigate and report on this admittedly difficult problem, the Government is not willing to abide by its findings. Of the thirteen signatories to the Wolfenden Report, only one dissented from the recommendation "that homosexual behaviour between consenting adults in private be no longer a criminal offence."

Prostitution

THE general feeling of the House of Commons appeared to be in favour of increasing the penalties imposed on prostitutes for soliciting but stopped short of sending them to prison. We find this aspect of the Wolfenden Report more difficult than the other. No one is idealistic enough to imagine that it is possible to abolish prostitution; the only question is how to put an end to a public nuisance and in particular how to diminish the revolting evil of the men who live on the earnings of prostitutes. We agree with Mr. ANTHONY GREENWOOD, who is in favour of heavier fines for prostitutes but would reserve imprisonment for

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those who organise prostitution and who profit from it. We must have a sense of proportion. If the resources now at our disposal enabled us to attempt the reformation of thousands of prostitutes there would be an argument for detention, but they do not and, in our opinion, there are more urgent claims. The Government's provisional view is that imprisonment, even if only invoked in the last resort, would go a long way to help, partly because it would give probation officers the opportunity to persuade prostitutes from their folly before they were beyond redemption.

The Probation Service

THERE are limits to what probation officers can do but we do not think that these limits have yet been reached. We sympathise with and support those who wish to increase the pay and improve the conditions of probation officers. Making all allowances for the fact that they are a devoted body of men and women to whom the result means more than financial reward, we are surprised that we are able to call on the services of even as many as we now have. They are already overworked and there is constant pressure on them to undertake fresh duties. In addition to their normal duties they help in such matters as adoption and marriage guidance. We now have many years experience of probation as a full-time salaried service staffed by experts. We believe that the time has come to give it even more support and encouragement.

Recruiting Solicitors

THE *Sunday Times* devoted its careers article last Sunday to our profession. The article appeared on one of the pages devoted to appointments and it is significant that not a single vacancy for a solicitor was advertised in the columns which surrounded it. We think that the young man of thirty-two whose career was described in the article has been more fortunate than most. He qualified at twenty-seven after doing his national service, three years at Oxford and three years' articles. His salary after admission was £850 a year for two years, after which he borrowed £2,000 from his bank in order to buy a partnership in a firm in the City in which his annual income is a little over £2,000. Someone has been charitable or the young man has been astonishingly successful or someone has left something out. We would be very interested to know how many men now aged thirty-two can claim a comparable record.

Within Reason

IT is stirring news that, according to the House of Lords, a reasonably careful tenant may have moments when he acts in a negligent way (*Regis Property Co., Ltd.* v. *Dudley*, p. 844, *ante*). This would have appealed to the ancient Greeks who believed that one should practise moderation in all things—even in moderation. If this is the true picture of the reasonably careful tenant, what is to happen to our old monitor, the reasonable man? We used to feel that he was a bit of a prig. Granted that he was never credited with unusual foresight, or any other extraordinary virtues, he seemed the soul of circumspection as he picked his way through a maze of foreseeable perils with unfailing care. Is he now to be lifted out of his mediocrity by moments of reckless abandon? Will he sometimes forget to get out of the bus at Clapham and be carried on to Tooting? Will he sometimes lose his temper with that lawn mower as he toils in the evening in his shirt-sleeves? There may be interesting departures in the law of negligence when we begin to measure our defendants by the standard of the man who is only reasonably reasonable. And when the Town and Country Planning Bill becomes law, it will be fun to argue that the reasonable planning authority assumed in Pt. I would, on occasions, grant permission for wildly improper, but lucrative, development. It stands to reason!

Piccadilly a "Holiday Resort"?

ACCORDING to our point of view, we either welcome or are disturbed by the increase in business activity and entertainment on Sundays. On more than one occasion the House of Commons has firmly rejected proposals to amend the law relating to the use of Sunday, but it cannot be doubted that those who wish to avoid the restrictive effect of such legislation are eager to discover such legal loopholes as there may be. Section 51 of the Shops Act, 1950, provides that where the area or any part of the area of a local authority is "a district which is frequented as a holiday resort during certain seasons of the year," subject to such conditions as they may impose, the local authority may permit shops to be open on not more than eighteen Sundays in each year for the purpose of selling such things as bathing or fishing requisites, photographic supplies, toys and souvenirs, books and postcards and any article of food. We understand that the London County Council is to be asked to consider whether Piccadilly Circus and its immediate neighbourhood is a "holiday resort" within the meaning of this section and, apart from the question of desirability, the legality of the opening of shops on Sunday in this area should provoke an interesting discussion. So far as we are aware, the term "holiday resort" has never been judicially defined in this country or by the courts of the Commonwealth or the United States of America.

Duty to Stop

BY reason of s. 22 of the Road Traffic Act, 1930, as amended by the Road Traffic Act, 1956, Sched. VIII, para. 15, an offence is committed where, "owing to the presence of a motor vehicle on a road," an accident occurs whereby personal injury is suffered by any person other than the driver of that motor vehicle or damage is caused to another vehicle or trailer or to an animal (as defined by s. 22 (3)) other than an animal in the motor vehicle which caused the accident, and the driver of that motor vehicle fails to stop. The Market Bosworth magistrates have recently been called upon to decide a rather unusual point in relation to this provision. It appears that by "cutting in" one driver, the defendant, caused three other vehicles to collide although his own vehicle escaped damage and impact with any of the other vehicles. When interviewed the defendant admitted that he knew that there had been a collision but he stated that he did not think that the accident was his responsibility. However, he seems to have changed his mind before the hearing as he pleaded guilty to the charge of failing to stop after an accident and a fine of £5 was imposed in respect of this offence. Although his vehicle had not been in collision in the accident, the other vehicles had collided "owing to the presence" of his vehicle on the road.

THE MAGISTRATES' DOMESTIC JURISDICTION

A CRITICAL SURVEY—I

THIS article is intended as a critical survey of the matrimonial jurisdiction and practice in the magistrates' courts, particularly in London, and is written from the point of view of the practitioner. Thus it is with common-sense and every day matters of practice that it is concerned, such as affect those who frequently enter these courts as advocates in domestic disputes. I trust that the remarks contained herein will not appear presumptuous, for they are written with great respect for those who administer this complex section of our law.

Before commenting upon any particular aspect of this subject it is first wise to consider generally the nature and gravity of the litigation involved. Magistrates' courts have, of course, wide powers to make and discharge orders providing for the separation of spouses and for the custody of children. These personal matters, which are of very great importance, cannot be measured by any accurate yardstick. However, the financial orders which can be made by these courts are open to accurate assessment, and are far more substantial than is generally realised. Thus a husband aged twenty-five who is ordered to pay to his wife £5 per week will over the period of fifty years pay £13,000. If this sum were claimed in the civil courts it would be a substantial High Court action, tried by a High Court judge after months of interlocutory work. As it is, it will probably appear in a magistrates' "afternoon" list, amongst several other similar cases. If, then, these domestic cases are of serious import, in so far as they have far-reaching human and financial effects, the practice and procedure should be so geared as to give them an adequate hearing. It is the purpose of this article to consider whether this end is, at present, achieved, and, if not, in what respects the existing practice should be reviewed.

Venue

When, at the end of the last century, the magistrates' courts were given jurisdiction to deal with domestic cases it was, no doubt, little realised that so many of these cases would have to be heard each week, and it was probably a matter of the greatest convenience to place such cases within the magistrates' jurisdiction. The effect of so doing is to force parties to matrimonial disputes to go to the criminal courts, at which every felon from murderer to petty shoplifter is tried, in order to see a probation officer, issue or attend the hearing of a summons, or collect maintenance. Many of these parties, who have to frequent the criminal court acting in its matrimonial capacity, and have to enter these often gloomy and forbidding buildings, are themselves entirely innocent of any matrimonial offence and are, in fact, decent citizens who have been treated shabbily by their spouses. No doubt, outside London and the other big cities it is wholly impracticable to provide separate courts for the hearing of matrimonial cases—but in such cities surely it is not impossible. Rent tribunals were able to find accommodation for themselves—so why should domestic tribunals prove unable to do so? It has been suggested that the domestic cases now tried by the magistrates should be transferred to the county courts, where the tempo is more suited to their hearing. In favour of this proposition is the fact that there are county courts conveniently situated to take this work, and further that most, if not all, county court judges act as divorce commissioners and are therefore versed in matrimonial law. However, I very much doubt whether this course would find any support from the county courts themselves, and it would be extremely difficult if not impossible to fit these cases into their lists. In fact, it does not seem that such a course is really practicable, and it seems preferable to set up special matrimonial courts to take this work.

Pressure of time

Having considered briefly the venue at which domestic cases are heard, let us now consider the time factor, which is a matter of great concern, particularly in London.

Domestic cases are frequently given one half of a day in which to be heard and in London this normally amounts to an afternoon. An average afternoon's sitting is between two and three hours, during which period there are often seven or more cases listed to be heard. The effect of this pressure on the time of the courts is two-fold. First, it results in a sense of urgency and a desire to shorten the proceedings so as to dispose of the "lists," and secondly it leads to frequent adjournments. In the former case, bearing in mind the grave importance of the matters before the court, any attempt to hear the case with one eye on the clock is a grave injustice, which surely should never occur. In the second case, where adjournment is necessary, the hearing may extend over many weeks, if not months, and may result in the eventual decision being made long after the complainant gave evidence. It is by no means infrequent for a domestic case to be heard on four separate occasions, and I personally know of two or three cases in which five hearings have been necessary, extending over periods up to five months. In one of these cases the complainant and a witness had to travel all the way from Cheshire to South London on four separate occasions. The effect of such adjournments is often to cause an innocent party grave inconvenience and expense in gaining what is described as a summary remedy. In addition it must lead to a serious reduction in the efficiency of the tribunal. In matrimonial cases, perhaps more than in any other type of litigation, the demeanour of the parties in the witness box is of the first importance and the impression made by them on the magistrate should, surely, be firm in his mind when he finally makes his decision. If it is several months since he saw the complainant give evidence, during which time he has seen literally hundreds of other witnesses give evidence, how can he be expected to remember the details of behaviour which can give him an impression of honesty? In practice, surely, the tendency is either to forget, or to allow the characteristics of the witness to harden into a type by which they can conveniently be summarised. To expect more is surely unfair to our magistrates?

The second part of this article will be concerned with other aspects of the present practice and procedure in the magistrates' courts and, in particular, it will refer to a further disadvantage which arises, at any rate in part, from the frequent delays in hearing these cases.

F. H. L. P.

Mr. J. HAZAEL, deputy town clerk of Shoreditch, E., has been appointed town clerk of Stoke Newington, N.

Mr. J. T. MOLONY, Q.C., has been appointed a Commissioner of Assize on the South Eastern Circuit.

Common Law Commentary

STAMP DUTY ON CONTINGENT OBLIGATIONS OR RIGHTS

WYNN PARRY, J., in giving judgment in the case of *Independent Television Authority and Associated Rediffusion, Ltd.* v. *Inland Revenue Commissioners* [1958] 1 W.L.R. 943; *ante*, p. 635, indicated that, had the matter been free from authority, he would have been inclined to give a different interpretation to the relevant words in the head of charge in the Stamp Act.

This view was expressed on the question whether an agreement to make certain annual payments was an agreement liable to *ad valorem* stamp duty under the head of charge "Bond covenant or instrument of any kind whatsoever (1) being the only or principal or primary security for . . . any sum or sums of money at stated periods" within the meaning of Sched. I to the Stamp Act, 1891, notwithstanding that the annual payments of £495,600 for two and a half years and thereafter of £536,900 were liable to be increased or decreased automatically on a change of 5 per cent. or more in the average of the index figures for all items in the Interim Index of Retail Prices published by the Board of Trade. The point is already covered by the two *Underground Railways* cases, in the first of which (*Underground Electric Railways Company of London, Ltd.* v. *Inland Revenue Commissioners* [1905] 1 K.B. 174) there was an ascertainable sum which was a *minimum* sum on which a dividend would be payable if profits were made (and the possibility of the payment of such a dividend was part of the consideration), and in the second of which (*Underground Electric Railways Company of London, Ltd. and Glyn, Mills, Currie & Co.* v. *Inland Revenue Commissioners* [1914] 3 K.B. 210) there was a possibility of a *maximum* annual sum payable on guaranteed stock. In each of these cases it was possible that nothing would be payable in some years: in the first case because there might be no profits out of which the dividend could be paid (and it was non-cumulative), and in the second case because the profits might be sufficient to pay the guaranteed dividend so that nothing would be payable by the guarantor.

Contingent payments liable

From these decisions it is to be inferred that so long as there is an ascertainable sum payable—and it matters not whether it be a minimum or a maximum—stamp duty is leviable on that sum, notwithstanding that the payment of such sum is contingent on other factors. Wynn Parry, J.'s remarks on this point were as follows: "Were the matter *res integra*, then I should be inclined to say that the condition of liability to charge was that by an examination of the instrument the total amount payable under the instrument, that is, everything that is payable, must be ascertainable as at the date of the instrument, with the consequence that if the total were not so ascertainable then the charge would not operate. No doubt if this construction had found high judicial favour the Stamp Act, 1891, would have been altered . . ." Then, after referring to the Court of Appeal decision in *County of Durham Electrical Power Distribution Company* v. *Inland Revenue Commissioners* [1909] 2 K.B. 604, he adds: ". . . the court disregarded that part of the monetary consideration which could not be ascertained. Clearly, therefore, I cannot give the words in question the simple construction which otherwise I would have been inclined to give them."

"Security"

There were other arguments put forward in this case. First, it was argued that the document was not a "security" on the ground that "security" means a document ancillary to some other document which it "secures"; but this point was also covered by authority, viz., *Jones* v. *Inland Revenue Commissioners* [1895] 1 Q.B. 484. Secondly, it was suggested that to be a security within the head of charge it must be one relating to the passing of property such as one which relates to the hire of chattels or the sale of goods, and that the agreement in question (to provide programmes for broadcasting by the Independent Television Authority) was an agreement to provide services and consequently, on that view, not a security. This point, however, was considered by Wynn Parry, J., to be covered by *Jones* v. *Inland Revenue Commissioners*, *supra*, which concerned the provision of private telephone lines for Keith Prowse & Co., because that was a case of the provision of services since there was an obligation to maintain the telephonic communication. Thirdly, it was argued that an agreement is not a security where it is executory. The details of this argument are not reported, but presumably it is based on the view that if the obligation is not performed the remedy will be damages which are uncertain, consequently the obligation to pay the sums stated is not "secured." Here again there were decisions against that argument binding on the judge (and, he considered, on the Court of Appeal) including the decision in *National Telephone Co., Ltd.* v. *Inland Revenue Commissioners* [1899] 1 Q.B. 250.

Options

It is of interest to contrast these cases with the few scattered remarks to be found in cases on options. So far we have been considering contingent obligations, whereas an option may be regarded as a contingent right. It seems that an "option" is treated as not being "property"; but whether these remarks arise from the consideration that the right which an "option" confers is too contingent or uncertain to be regarded as property, or whether from some other point of view, is unknown. In *Muller & Co.'s Margarine, Ltd.* v. *Inland Revenue Commissioners* [1900] 1 Q.B. 310, A. L. Smith, L.J., says (at p. 318): "What the . . . parties had acquired from the vendor was not any estate or interest in the property at all, but a mere option or right to purchase . . ." Collins, L.J., says (at p. 320): "I do not think that an option to purchase at a particular price can properly be described as an equitable estate or interest in property." The latter remark is ambiguous because it might mean that it was not "an equitable estate or interest" or that it was an estate or interest, but not in "property."

The same two lords justices gave the judgments which referred to this case in *Danubian Sugar Factories* v. *Inland Revenue Commissioners* [1901] 1 Q.B. 245. They explained that in *Muller's* case they did not find that there was the sale of an option, but merely expressed the opinion that if the transaction were the sale of an option it would not be a sale of "an equitable estate or interest." The reference here is to s. 59 (1) of the Act, which provides that "Any contract or agreement for the sale of any equitable estate or interest in any property whatsoever, or for the sale of any estate or interest in any property . . . shall be charged with the same

ad valorem duty, to be paid by the purchaser, as if it were an actual conveyance on sale . . ." This leaves open the question whether an agreement to grant an option is an agreement for the sale of " an estate or interest in (any) property."

In practice the Revenue treat a contract to grant an option as a contract not relating to property, and so not chargeable with *ad valorem* duty, but it is believed that if a person, to whom such a right as an option has been granted, sells or transfers the right (where it is assignable, which would presumably depend on whether there was an express term against assignment, or the nature of the case justified implying such a term), then the assignment is treated as an assignment of property. This would follow from the *Danubian Sugar Factories* case, *supra*, for in that case there was a transfer of the benefit of a contract and that was held to be a transfer of property.

L. W. M.

ESTATE DUTY PROVISIONS OF THE FINANCE ACT, 1958

Of the six sections on estate duty enacted by the Finance Act, 1958, the most important is s. 30, on quick successions, considered in a previous article at p. 787, *ante*. Potentially more revenue is affected by this measure than by any of the others. The extension of the allowance is estimated to cost over £3m. in a full year. The fact that the section widens an already existing allowance means that it will be increasingly applied and thus have great practical importance in years to come.

Section 28: Purchases of interests in expectancy

The position caused by the next most significant section from the revenue angle is in complete contrast to that under s. 30. Section 28, concerning purchases of interests in expectancy, was passed to stop a tax avoidance practice estimated to be losing revenue at the rate of £2m. a year. If this section has been effectively drawn—and it presents a formidable piece of drafting running to thirteen subsections and being the longest section in the Act—it will substantially reduce the number of transactions in interests in expectancy. Thus this section has a negative impact upon activities falling within its scope, although, upon occasion, it may still be desirable for a life-tenant to purchase a reversionary interest (cf. pp. 571 and 572, *ante*).

The section amounts to an extension of the Finance Act, 1940, s. 43, as amended by the Finance Act, 1950. In effect, s. 43 itself widened the rules relating to gifts *inter vivos* to cover termination of life interests and annuities in possession irrespective of the giving of value or otherwise. This section, however, did not cover the case of a life-tenant enlarging his interest by purchasing from the remainderman, at a proper actuarial valuation, the remainder expectant on his life interest. Once the transaction was completed the consideration paid to the remainderman was free from liability to estate duty on the life-tenant's death. On the other hand, the value of the remainder would be added to the life-tenant's estate. The purchase moneys had to be paid from resources other than those of the fund in which the purchaser had a life interest. In practice this requirement presented no difficulty as generally bank overdraft facilities could be arranged for the purpose. Purchases of reversionary interests by life-tenants had been increasing in recent years and the Chancellor decided to deprive these transactions of their estate duty advantage. Accordingly, s. 28 of the 1958 Act imposes estate duty on a sum of money equal to the amount or value of the consideration given for the purchase of the interest in expectancy if the life-tenant dies within five years after the purchase (subs. (1)) or one year if the vendor is a body of persons established for public or charitable purposes only or if the vendors are trustees of a trust so established (subs. (10)). The section affects any purchase made after 15th April, 1958 (subs. (13)).

It is noteworthy that from the debate which led to the passing of s. 43 of the 1950 Act—which amended s. 43 of the 1940 Act and negatived the effect of *Re St. Aubyn; A.-G.* v. *St. Aubyn* (*No.* 1) [1950] 2 K.B. 451—the conclusion clearly could be drawn that a purchase of a reversionary interest by a life-tenant was not caught by s. 43 of the 1940 Act (*Hansard*, Commons, 19th June, 1950, cols. 962 and 963). It seems strange that eight further years were to pass before that situation was remedied.

Section 28 is complex and for a full and detailed exposition readers are referred to pp. 13 to 26 of the third supplement to Dymond's Death Duties, 12th ed. As a rule, the personal representatives of the deceased are accountable for duty due under this section, but where duty is exigible in respect of a settlement which has been terminated, a liability therefor is also placed upon the last trustees of the settlement—as is the case when a claim for duty is made under s. 43 of the 1940 Act (subs. (7)).

In general any sum dutiable under s. 28 will be aggregated with the rest of the deceased's estate to ascertain the rate of duty payable (subs. (1)). In certain cases election may be made for duty to be paid on the value of the interest purchased instead of on the amount of consideration paid (cf. subss. (1) to (3)). This will enable the taxpayer to utilise any special relief attaching to that interest, for example, the 45 per cent. relief for agricultural land. Any such election must be exercised by the persons accountable for the duty, who should give written notice to the Commissioners of Inland Revenue within twelve months of the death or such longer period as the Commissioners may allow (subs. (1)).

Subsection (4) is designed to avoid an overcharge of duty where a life-tenant and reversioner divide the whole of the settled fund between them. Without this provision such a transaction would be caught both by this section and by s. 43 of the 1940 Act. The subsection, however, will not assist a case involving successive purchases of interests within the five years where the interest first bought is subsequently used as consideration for a further purchase.

The section assists one method of financing a transaction designed to terminate a trust. Where it is desired to finance the purchase of a reversion, it is now possible for money to be borrowed on the security of a charge on the trust funds about to be released (subs. (8)). Previously a difficulty was caused by s. 57 of the Finance (1909–10) Act, 1910, which, in connection with valuing an estate for duty purposes, in certain cases prohibits the making of an allowance for debts or incumbrances incurred or created for the purchase of an interest in expectancy. In other words, a sum borrowed to purchase a reversion upon occasion could not be deducted as a debt from the life-tenant's estate. Subsection (8) stipulates that in such a case s. 57 of the 1910 Act is not to apply.

Hard cases make good law

It is interesting that there is a common factor between two such differing sections as s. 29, on the application of presumptions as to order of deaths, and s. 33, extending the relief given in cases of demolition or clearance orders. The link between them is that each was introduced as a result of one specific hard case.

Section 29: Effect of presumptions as to order of deaths

Readers will recall that s. 184 of the Law of Property Act, 1925, provides that where two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, for all purposes affecting the title to property, the presumption must be made that the deaths occurred in order of seniority and thus the older of the parties concerned are deemed to have died before the younger. The unfortunate effect of this rule upon the estate duty position was illustrated in the sad case of *Re Beare* [1958] T.R. 181. In that case estate duty was held to be twice leviable upon the estate of a husband killed together with his wife, who was the younger of the two. Public sympathy was justly aroused by the plight of the young children of the couple who, at one fell blow, found themselves orphans and deprived of their means of support, and their father's fortune depleted twice by the estate duty law deeming it to have become their mother's for one short moment of time under the *commorientes* rule. When the effect of this case was appreciated swift legislative action was urged in many quarters. The result is s. 29 (1) providing that where, after 15th April, 1958, two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, the property chargeable with estate duty in respect of each death must be ascertained as if they had died at the same instant and all relevant property had devolved accordingly. The children of a couple leaving life interests in or the residue of their estates to each other will no longer suffer greater estate duty, in the event of a fatal accident to the couple, than the children of a couple similarly killed but dying intestate (cf. Intestates' Estates Act, 1952, s. 1 (4)).

As was mentioned at p. 788, *ante*, survivorship clauses should still be included in wills to cover cases where the survival of one spouse beyond the life of the other can be established.

The opportunity was also taken in this year's Finance Act to tidy up the unsatisfactory state of the law left by *Re Scott* [1901] 1 K.B. 228. The effect of this case was to levy estate duty on the fictional death of a child or other issue treated as surviving the testator by virtue of the Wills Act, 1837, s. 33. Section 29 (2) of the 1958 Act, for estate duty purposes, prevents the deeming of the passing of property after 15th April, 1958, because of a testamentary disposition under s. 33 of the 1837 Act. When a testator is making a bequest to his children or other issue, an express substitution clause is still desirable because otherwise the property saved from lapse by the Wills Act is made part of the deceased child's estate and thus may go, for example, to the deceased child's creditors rather than to his heirs.

Section 33: Relief in cases of demolition or clearance orders

Section 33 of the Finance Act, 1956, gives estate duty relief, upon certain conditions, when a compulsory acquisition of an interest in land is made for a smaller sum than that on which estate duty was valued within the preceding five years. Section 33 of the 1958 Act extends this relief to cover an interest in a house which is demolished in pursuance of a demolition order under Pt. II of the Housing Act, 1957, or a clearance order under Pt. III of that Act. The effect of this section is that where a house is demolished under such an order made within five years of the death in question, the value, for purposes of estate duty, may be reduced to the value of the site (normally the amount of compensation payable in the case of a demolition or clearance order) plus the amount of compensation payable.

This section was passed as a result of a member bringing to the attention of the House the only case of hardship in this context known to the Inland Revenue (cf. *Hansard*, Commons, 15th July, 1958, col. 1121). This case concerned a house which was valued at £700 for estate duty purposes. Within a year of that valuation the house was valued as nil when an order was made requiring the owner to demolish the house at his own expense. Such a case is rare because to bring it about there must be a liability to estate duty on an estate of more than £3,000 on the death of the proprietor, and the house must have a market value although unfit for human habitation. Should any similar case ever again arise, it is to be hoped that the heirs of the estate concerned, or their advisers, will recall s. 33 of the 1958 Act.

Section 31: Works of art, etc., bought at auction for public collections

Section 31 is in effect a modification to earlier provisions (cf. Finance Act, 1921, s. 44, and Finance Act, 1930, s. 40 (2)), providing that estate duty is not to be charged on certain sales to national institutions or other bodies or persons of works of art or other property previously exempted. These institutions include the National Gallery, the British Museum and the National Art Collections Fund. The new section prevents the exemptions applying, after July, 1958, to sales made otherwise than by private treaty. In other words, a vendor offering works of art for sale at an auction will no longer enjoy the benefit of the exemptions. This alteration is justified because at an auction the vendor is not knowingly dealing with a public collection in preference to an oversea or private buyer. If the highest bidder happened to be one of the national bodies within the meaning of the exemptions, the vendor hitherto received a bonus by virtue of those exemptions.

Section 32: Power to give property in satisfaction of death duty

Anyone empowered to sell property to pay estate duty is now permitted, by s. 32 (1), to transfer it for the same purpose. Prior to the passing of this section, it had been doubted whether a life-tenant could give an absolute title when transferring property in settlement of estate duty, even though he enjoyed a power of sale. The doubts rose from the wording of s. 39 of the Settled Land Act, 1925, requiring every such sale to be made for the best consideration *in money* that can reasonably be obtained. Section 32 has been given retrospective effect without time limit (s. 32 (3)), in order to protect such bodies as the National Trust and the Youth Hostels Association to which transfers had been made.

The wording of s. 32 (1) does not affect provisions (under the Finance Act, 1953, s. 30 (3), as originally enacted or as applied by the Finance Act, 1956, s. 34), that the acceptance of certain works of art or other objects in satisfaction of estate duty is not to be treated as a sale so as to raise a charge of duty under the Finance Act, 1930, s. 40 (2) (1958 Act, s. 32 (2)).

N. D. V.

Landlord and Tenant Notebook

"ENTITLED TO RECEIVE THE RENTS AND PROFITS"

THE "Notebook" for 28th June last (*ante*, p. 463) discussed the decision in *Re Nos. 55 and 57 Holmes Road, Kentish Town; Beardmore Motors, Ltd.* v. *Birch Bros. (Properties), Ltd.* [1958] 2 W.L.R. 975; *ante*, p. 419, in which an application for a new tenancy of business premises failed because the tenants persisted in proceeding against a company which was not their landlord. Very different were the circumstances of *Wood* v. *Durose* (1958), 172 E.G. 295, in which the tenant of an agricultural holding discovered by chance that the man to whom he had paid rent for years, and who had obtained an award increasing the rent of the holding, had not been his landlord at all.

W, the applicant in proceedings to set aside an arbitration award, had become tenant of the farm concerned in 1916. In 1941 the reversion was conveyed to Mrs. *D*, wife of the respondent; but *W* had always dealt with Mr. *D*. A document, signed by Mrs. *D* in 1944, stated that the property was actually in her name but belonged to her husband, for whom she was (she said) a trustee. In 1950 it was Mrs. *D* who sold some 14 acres of the land to a Mr. *H*; Mr. *D* continued collecting the rent for the whole, paying over an apportioned amount to *H*.

The arbitration

In 1954, Mr. *D's* solicitors served the applicant with a notice demanding an arbitration as to rent (Agricultural Holdings Act, 1948, s. 8), doing so "on behalf of" Mr. *D*; the arbitrator made an award which increased the figure but his award did not cover the 14 acres which had been sold to Mr. *H*. As Mr. *D* then ceased to pay over any money to *H*, the latter sued *W* for three years' rent due; and it was in the course of these proceedings that *W* discovered that the reversion had been conveyed to Mrs. *D*. He thereupon applied to the local county court for an order setting aside the arbitration; it was necessary to obtain an extension of time, and this the judge granted; but the decision was that Mr. *D* had been and was the landlord.

Grounds for setting aside

The application had been made on the ground that the award had been "improperly procured": Agricultural Holdings Act, 1948, Sched. VI, para. 25 (2): where the arbitrator has misconducted himself, or an arbitration or award has been improperly procured. The Court of Appeal had no hesitation in holding that there was no such impropriety; as in the case of the Arbitration Act, 1950, s. 23 (2), and the provisions in earlier statutes which that subsection replaced, "'improperly' had always been held to connote fraud or bribery." But the question of jurisdiction was one which could be raised on appeal even if it had not been raised in the court of first instance, an appellate tribunal being indeed bound to take the point itself if no party took it. And as the parties to the arbitration had not been landlord and tenant there had been no arbitration and the award could not stand.

Concurring, Jenkins, L.J., expressed his regret at the conclusion reached. But, unlike rent control legislation, that concerned with agricultural holdings does not fix rents *in rem*; and whether the tenant in such a case as *Wood* v. *Durose* would have a valid claim for overpayments, or in respect of any costs which an "arbitrator" might have ordered him to pay, are questions beyond the scope of this article.

The definition

I can, however, say a word or two about the actual decision on the issue whether or not Mr. *D* and *W* had been landlord and tenant at the relevant times. Far less attention appears to have been devoted to this question than to that of why the award should be set aside. No one will, of course, object to tersity; but one feels that a rather slower approach to the conclusion would not have been amiss here where the reasoning appears to have amounted to this—the county court judge must have overlooked the definition in s. 94 (1); the landlord is the person entitled to receive the rents and profits of the holding; Mr. *D* was not so entitled any more than a total stranger would have been.

Two points suggest themselves: could not Mr. *D* be said to have been entitled to those rents and profits; and was not *W* estopped from denying that Mr. *D* was so entitled?

Rents and profits

The meaning of this expression has often been the subject of litigation. A series of decisions has shown that a bequest of "rents" of land which is let passes the freehold (*Kerry* v. *Derrick* (1605), Cro. Jac. 104, is the earliest authority: the testator "intended to pass such an estate as should have continuance to a longer time than the lease should endure"); "rents and profits" has been more commonly used in connection with raising money for a legatee, but even then, unless some intention to preserve the estate can be found in the will, they may have the effect (if the money is to be raised within a fixed time) of authorising a sale: *Allan* v. *Backhouse* (1813), 2 Ves. & B. 65. In that case, Plumer, V.-C., explained why "rents" and "profits" came to be coupled: "Whatever might have been the interpretation of these words, had the case been new, whatever doubt might have arisen upon them, as denoting annual, or permanent, profits, it is now too late to speculate; this court having by a technical, artificial, but liberal construction, admitting it not to be the natural meaning, extended these words, when applied to the object of raising a gross sum at a fixed time, when it must be raised and paid without delay, to a power to raise by sale or mortgage; unless restrained by other words." Then in *Lovat (Lord)* v. *Leeds (Duchess) (No. 2)* (1862), 2 Drew. & Sm. 75, Kindersley, V.-C., said that the words had different meanings, and must be held to extend to the proceeds of the sale of an estate.

The effect of these Chancery decisions is, I submit, that "rents and profits" is an expression used in connection with land regarded as capital, not necessarily occupied by its owner. And when they were used in a revenue statute, the Income Tax Act, 1842, s. 61 (see now the Income Tax Act, 1952, s. 182), the decision in *R.* v. *Income Tax Special Commissioners; ex parte Essex Hall* [1911] 2 K.B. 434 (C.A.) bears this out. In that case a limited company owned a building part of which they occupied and the rest of which they let as furnished or partly furnished rooms; being trustees of a charity, they claimed an allowance under the then existing provisions: ". . . rents and profits of lands . . . vested in trustees for charitable purposes." It was held that "rents and profits" was not the equivalent of "annual value"; and Kennedy, L.J., considered that the "profits" from the furnished lettings

were profits of a business, not part of rents and profits of land.

The position, then, can be said to be that for some purposes "rents and profits" connotes ownership of land as capital. But when land is sold it is possible to attribute different meanings to "rents" and "profits" as regards rights pending completion. Profits covers crops maturing in the ordinary course of husbandry: *Webster* v. *Donaldson* (1865), 34 Beav. 451.

Agricultural holdings cases

It is reasonably clear that when adopting this definition the Legislature was anxious to ensure that tenant farmers should not be baulked, in the matter of claims for compensation for improvements and the like, by a last-minute transfer of the reversion. "It is clear that the respondents are entitled to compensation from someone," said Scrutton, L.J., in *Bradshaw* v. *Bird* [1920] 3 K.B. 144 (C.A.), "but from whom?" In that case the purchaser of the reversion to a farm, the tenant of which had been served with notice to quit expiring at Michaelmas, 1918, became entitled to the rents and profits as from Christmas, 1917. On 5th July, 1918, the tenants served notice of claim for compensation for disturbance under the Agricultural Holdings Act, 1908 (which used the "rents and profits" definition), on the purchaser, who had not completed and did not complete till 18th July, 1918. He had not concurred in the notice to quit which the vendors had served before the purchase, and his view was that the (then) provision for compensation for disturbance was meant to punish the disturber. But, as Atkin, L.J., succinctly put it: "The landlord pays compensation at the end of the tenancy. The landlord is the person for the time being entitled to receive the rents and profits of the land . . ."

Whereas in *Tombs* v. *Turvey* (1923), 93 L.J.K.B. 785, a contract for the sale of the reversion having provided that rents and profits should be retained by the vendor until completion, which was fixed so as to synchronise with the termination of the tenancy but actually took place later, the tenant's claim against the purchaser failed.

But in *Wood* v. *Durose* there was no question of a tenant being baulked by a sale of the reversion; hence the judicial sympathy expressed by Jenkins, L.J.

"Entitled to"

Mrs. *D* had declared that she held the property as trustee for her husband and he had received the rents. Was it arguable that this made *him* the person entitled to rents and profits?

Possible arguments, for and against, would have covered much ground. As regards the actual notice demanding a reference, it could have been urged that a *cestui que trust* authorised by the trustee to manage the trust property can give a valid notice to quit: *Jones* v. *Phipps* (1868), L.R. 3 Q.B. 567.

The main point in the alleged landlord's case would, however, presumably have been that the tenant, having paid rent to him, was estopped from denying his title: *Doe d. Clun (Bailiff and Burgesses)* v. *Clarke* (1809), Peake Add. Cas. 239, and that this applies though the landlord's title be merely equitable "and therefore, at law, a nullity," as Blackburn, J., put it in *Board* v. *Board* (1873), L.R. 9 Q.B. 48. To which the answers might be: that *Doe d. Clun* v. *Clarke* goes no further than saying that the payment *prima facie* evidences title in the landlord; thus, the presumption does not arise when the alleged landlord did not let the claimant into possession: *Rogers* v. *Pitcher* (1815), 6 Taunt. 202; that where payment has been made under a misrepresentation, the tenant is at least not estopped from resisting further payment, after discovery of the mistake: *Gravenor* v. *Woodhouse* (1822), 1 Bing. 38. And perhaps more conclusive would be the argument that the court was concerned with a statutory definition, and the doctrine of estoppel could not operate so as to give the arbitrator jurisdiction: *Griffiths* v. *Davies* [1943] 1 K.B. 618 (C.A.).

R. B.

HERE AND THERE

"ONE FOR HIM"

"BOSWELL: Pray, sir, do you not suppose that there are fifty women in the world with any one of whom a man may be as happy as with any one woman in particular? JOHNSON: Aye, sir, fifty thousand. BOSWELL: Then, sir, you are not of opinion with some who imagine that certain men and certain women are made for each other and that they cannot be happy if they miss their counterparts. JOHNSON: To be sure not, sir. I believe marriages would in general be as happy, and often more so, if they were all made by the Lord Chancellor upon a due consideration of the characters and circumstances without the parties having any choice in the matter." Thus Boswell, that indefatigable searcher and experimenter in the quest for a suitable mate, received strong and authoritative reassurance that he had more than one solitary elusive chance of final matrimonial happiness. He was not, on Dr. Johnson's theory, like poor Antipholus of Syracuse "like a drop of water that in the ocean seeks another drop," though for us it is hard to imagine any Lord Chancellor "upon a due consideration of the characters and circumstances" awarding Boswell to any nice woman. It was the age of reason and law, of Lord Hardwicke and Lord Mansfield, and where an earlier sage might well have suggested the Pope or the Archbishop as the proper arbiter in the making of marriages, Johnson, for all his piety, thought instinctively of a judicial personage to hear, to deliberate and to determine. The Victorians still revered the law but it had not for them the classic grandeur of the eighteenth century conception and for them Dr. Johnson's Lord Chancellor was transformed into Gilbert's, who in his court would sit all day giving agreeable girls away. And in our own age of technology and the managerial State to whom would we entrust the task of matchmaking? Just at present probably to a medico-psychiatric marriage guidance clinic under the Ministry of Social Hygiene. But stay, surely technology is even greater than biology. Of course it is. Use (as the up-to-date Londoner might say) your electronic "loaf." As a matter of fact, the computer is already in the marriage market and doubtless will soon be as firmly established there as the totalisator on the race-course. At present it is operating in the United States, where week by week personal details of applicants are fed into it and sorted by it on a television show. So far only one couple out of thirty-five paired off have taken its advice and got married. It should have been invited to give the bride away and propose their health in a speech of electrifying felicity.

NO MARRIAGE COURT

In Dr. Johnson's day there was no Divorce Court. Perhaps there would never have been one if his idea of a Marriage Court had been realised. Anyhow, we have accepted the paradox that while marriages are still made chaotically, individualistically by private enterprise, private preference and natural selection just as easily as taking a day trip to Calais, the Lord Chancellor's nominees do arbitrate over the unmaking of marriages. Judging by the newspaper reports of the proceedings, a modern Boswell may feel certain that there are fifty women in the world with whom a man may be as miserable as with any woman in particular, aye, fifty thousand. The women too have just as wide a range of men to be miserable with. There are so many ways of making someone else wretched, and the Lord Chancellor's nominees sit in their courts all day deciding how much disagreeable behaviour adds up to legal cruelty and recording for future generations the domestic customs of the mid-twentieth century English. It is, for example, cruel to make your wife share a small flat with a python, a boa-constrictor and a three-foot alligator, even if you are a zoologist and keep them for scientific observation and not as pets. The very first marriage, you remember, was wrecked by a serpent which led the wife to take a scientific interest in the tree of the knowledge of good and evil. It is cruel for a wife to put powdered glass in her husband's dinner. The judge said : " I cannot imagine a clearer case of cruelty." It is cruel for a husband to use " frightful " language to his wife. It is cruel for a wife to nag her husband till he changes from a " jovial chap " to an unhappy character who fumbles his accordion so badly that he loses his dance band job. *Per contra* it is not cruel for a man to go to a football match instead of accompanying his wife to a nursing home to have her first baby. It is not cruel for a husband to want to change his sex. It is not cruel for a husband to be shiftless and dishonest. All these are quite recent flowers from the weed-patch of matrimonial infelicity. It takes more than natural selection to keep two people together. Dr. Johnson deserves the last word as well as the first : " A question arose whether the state of marriage was natural to man. Johnson : Sir, it is so far from being natural for a man and woman to live in a state of marriage that we find all the motives they have for remaining in that connection and the restraints which civilised society imposes to prevent separation are hardly sufficient to keep them together."

Richard Roe

RENT ACT PROBLEMS

Readers are cordially invited to submit their problems, whether on the Rent Act, 1957, or on other subjects, to the " Points in Practice " Department, " The Solicitors' Journal," Oyez House, Breams Buildings, Fetter Lane, London, E.C.4, but the following points should be noted :

1. Questions can only be accepted from registered subscribers who are practising solicitors.

2. Questions should be brief, typewritten, *in duplicate*, and should be accompanied by the sender's name and address *on a separate sheet*.

3. If a postal reply is desired, a stamped addressed envelope should be enclosed.

Decontrol—Rateable Value—Flat and Garage Separately Assessed

Q. *A* is the owner of a building which comprises three separate flats and a garage, and *A* occupies the ground-floor flat. The garage is situate in what was formerly a cellar of the building. *A* purchased the building in 1948 and *B* was then the tenant of the second-floor flat and the garage, and still is at the present time. In 1948, the rating of the garage was included with that of the ground floor, but on the recent revaluation for rating in 1955 the garage was separately rated, with the result that the second-floor flat was rated at £29 and the garage £5, and it would appear according to para. 1 (*c*) of Sched. V to the Rent Act, 1957, that the two rateable values of £29 and £5 should be added together, with the consequence that the second-floor flat is now outside the control of the Rent Acts. There is also the question of physical separation to be considered, as defined in *Whiteley* v. *Wilson* [1952] 2 All E.R. 940, as between the position of the second-floor flat and the garage, and we shall be glad to have your opinion as to whether the second-floor flat and garage are to be regarded as one entity or in the alternative if the garage is entirely separate, and, if so, whether *A* can apply for possession of the garage.

A. This is not an easy question, and we know of no authority directly in point. We consider, however, that " the premises " for the purposes of para. 1 (*c*) of Sched. V to the Rent Act, 1957, means the demised premises, i.e., all the premises subject to the one letting (cf. *Feyereisel* v. *Turnidge* [1952] 2 Q.B. 29, at p. 39). If, therefore, the garage was let at the same time as the flat and under the same tenancy agreement, we think that their rateable values must be aggregated for the purposes of the Rent Act, 1957, but not if the letting took place at separate times or under separate agreements. In the latter case the landlord would be entitled to determine the tenancy of the garage.

Undertaking to Remedy Defects—One Defect Unremedied—Tenant Satisfied—Local Authority Not Satisfied

Q. We act for a landlord of property outside London with a rateable value of less than £30. Form A was served in June, 1958, and in July the tenant then served Form G (notice of defects), listing about ten defects. Although the landlord put some of the work in hand, in September the local authority issued Form J (notice of proposal to issue certificate), which listed eight of the items. On 3rd October the landlord served Form K, undertaking to remedy the eight defects. The tenant decided that she wanted all the work done and we then served Form O (application) on the local authority. The local authority then served Form P on us, listing three of the defects which have not been remedied. Two of these defects have been complied with and there is only one outstanding in respect of paintwork. The tenant is satisfied with all that has been done and is not therefore prepared to press for the final defect (the paintwork) to be remedied. We therefore wrote to the local authority pointing out that the tenant was satisfied and asking the local authority to let us have their certificate that the defects had been remedied. The reply now received from the authority is : " These premises have been inspected and it is reported that all the defects specified in the landlord's undertaking have still not been carried out." Since the tenant is now satisfied, by what procedure can we make the local authority withdraw their notice or give a satisfactory certificate ?

A. There is, in our opinion, no procedure by which an undertaking given under Sched. I, para. 4 (1), can be cancelled or modified, as can a certificate of disrepair under para. 4 (5) or para. 6 (2); and the only way out that suggests itself in the circumstances is to avoid the "same consequences" of para. 8 (1) by modifying the "defects to which the undertaking relates" of that sub-paragraph. Paragraph 4 (1) contemplates an agreement in writing limiting the undertaking to "such of them [the defects] as the tenant may agree . . . to accept as sufficient," and our suggestion is that the tenant be asked to sign such an agreement, the consequence being that the defects to which the undertaking (still) relates would be remedied. It would not be necessary, though it might be advisable, to apply again under para. 8 (2); if no application were made, or an application made and refused, it would still be open to the landlord to contend that the rent abatement consequences had not followed.

"THE SOLICITORS' JOURNAL," 4th DECEMBER, 1858

On the 4th December, 1858, The Solicitors' Journal published the following: "The mode in which the business of the Central Criminal Court has been disposed of at the recent session or two has been . . . the source of great dissatisfaction . . . At the session which has just concluded the confusion . . . that prevailed was greater than on any previous occasion . . . From the moment of the opening of the session the only thing that appears to be thought of is to finish it . . . At the recent session, for the first time, a third court was formed on the Tuesday and many of the prisoners, who had actually only been committed a few hours, were tried, convicted and some of them sentenced to severe punishment, without having any opportunity of communicating with their friends or preparing their defence. On Wednesday and Thursday the confusion and disorder were almost beyond description, which was heightened by a sudden arrangement that a fourth court should be formed in the dining-room at the top of the building. It need hardly be stated that this room does not possess any one single requisite for such a purpose and . . . when prisoners are tried there it is necessary to escort them through the crowded lobbies and thus a grave risk of their escaping is incurred . . . On Thursday a woman who had been tried in this room became dreadfully excited after she had been sentenced and as she was going downstairs she endeavoured to throw herself over the bannisters . . . She was brought into the New Court where Mr. Justice Hill was . . . trying an important case, shrieking and yelling like a maniac, and it was . . . necessary to suspend the business until she had been removed through the dock and into the prison . . . The only ground for all this confusion and hurry appears to be the saving of expense in shortening the session by a day, but the inconvenience and injustice which are created are much more than commensurate with any paltry saving that may be effected by these means."

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Notice of Intended Prosecution

Sir,—An article with this title in your 22nd November issue [*ante*, p. 836] seems to suffer from the omission of a very important decision. Your contributor says, "The notice must be sent to the place where it is most likely to come to the notice of the intended recipient. There are three decisions on this point . . ." There are not: there are at least four, the case of *Beer* v. *Davies* [1958] 2 All E.R. 255, being the most recent and the one not mentioned. (Of the ones that were mentioned, incidentally, *Sandland* v. *Neale* is reported not only at 119 J.P. 583 but at [1955] 3 All E.R. 571).

The exact effect of *Beer* v. *Davies* is perhaps a little doubtful—indeed, I hoped to see it discussed in your article—but in it Lord Goddard, C.J., spoke of the earlier cases cited by your contributor in these words: "Various other cases have been decided in this court, which I need not consider, since the Court of Appeal have subsequently dealt with the question of service . . ." (i.e., in the case of *R.* v. *London Quarter Sessions; ex parte Rossi* [1956] 1 All E.R. 670).

In the light of this, the article is surely to some extent misleading, in that it omits altogether *Beer* v. *Davies* and cites instead cases which may, it seems, have ceased to be relevant or which, at least, it greatly modifies. Perhaps your contributor would now comment on this case.

R. T. Oerton.

Barnstaple.

[Our contributor writes:—

I agree with your correspondent that the article is not complete without a reference to *Beer* v. *Davies*, but I do not agree with his interpretation of the case. It is indeed a doubtful case; to discuss fully the implications of *Ex parte Rossi* and this case in relation to s. 21 would require another article and I therefore avoided *Ex parte Rossi* as being a matter of general law which had no place in the article.

To my mind, *Beer* v. *Davies* applies *Ex parte Rossi* to the particular instance where a letter sent by registered post is shown not to have been delivered. The onus is on the defendant, and in *Ex parte Rossi* the Court of Appeal said that there was no service if the notice was returned undelivered. But Morris, L.J., said that a registered letter could be delivered to someone "who will take responsibility for seeing that he (the addressee) gets it," and Parker, L.J., mentioned the three cases on s. 21 and said, "It has been held that 'sent' merely means dispatched." One cannot say that he thereby affirmed the three cases, but they were strengthened rather than weakened and it is doubtful whether Lord Goddard was right in applying *Ex parte Rossi* without qualification. Nevertheless, on the reasoning of the three cases, the decision in *Beer* v. *Davies* was correct as the letter was returned undelivered. *Ex parte Rossi* does not say the letter must be received. One could also seek to distinguish *Ex parte Rossi* because the notice there was "analogous to a writ of summons" (Lord Justice Denning) and a s. 21 notice is not. This opens up another field, however.]

Refusal of Driving Licences

Sir,—I refer to the question discussed on p. 832, *ante*, as to whether there is a right to appeal to a magistrates' court against the refusal of a driving licence. The Road Traffic Act, 1930, s. 5 (2), as originally enacted, declared that "if from the declaration it appears that the applicant is suffering from a (prescribed) disease or disability, the licensing authority shall refuse to grant a licence." Where an applicant had himself disclosed in his declaration that he had a prescribed disability, it was held in *R.* v. *Cumberland Justices; ex parte Hepworth* (1931), 95 J.P. 206, that he had no right to appeal to a magistrates' court under s. 5 (5). The judgment of Lord Hanworth proceeded partly on the ground that the applicant, having himself disclosed his disability, was not a "person aggrieved" under s. 5 (5). Because of an amendment made in 1956, the licensing authority may now also refuse a licence if it appears "on enquiry into other information" that the applicant has a prescribed disease or disability. There is surely a difference between an applicant who has himself disclosed his disability and one concerning whom information from other sources has been given to the authority. If an applicant of the latter type went to the authority and asked where information, which he regarded as inaccurate, was obtained, the authority could reply, "A little bird told me." I do not suggest

that responsible bodies like the London County Council would rely on micro-ornithic sources of information but an authority in good faith might act on quite inaccurate data, e.g., it might confuse a healthy applicant with another person of the same name and address. Surely an applicant has a right to appeal as a person aggrieved in such circumstances; otherwise he could be condemned without any chance to bring his grievance before the court. I suggest that the difference between information disclosed by the applicant and that disclosed by other sources is a sufficient ground for distinguishing the *Cumberland* case and that it can be argued strongly that there is a right to appeal under s. 5 (5) in such circumstances.

It is, of course, the licensing authority, i.e., the council of a county or county borough or committee thereof exercising delegated powers, which refuses or revokes a licence under s. 5, not an official of the council. It is therefore open to the applicant to approach a member of the council at any time to have the matter raised in the council or committee, with a view to getting the decision reversed, whether or not he appeals to the magistrates.

CAMBRIAN

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NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Court of Appeal

TRUST: FRAUDULENT CONVERSION BY TRUSTEE: CLAIM TO FOLLOW ASSETS IN HANDS OF INNOCENT THIRD PARTY: LIMITATION: AMENDMENT OF PLEADINGS

G. L. Baker, Ltd. *v.* Medway Building and Supplies, Ltd.

Jenkins, Romer and Willmer, L.JJ. 30th October, 1958

Appeal from Danckwerts, J.

In 1950 the plaintiff company entrusted to one *T*, who was their auditor, sums amounting to some £80,000. This was paid by *T* into his bank account, which was at the time overdrawn. *T* subsequently accounted to the plaintiffs for part of the sum, but diverted the balance to purposes unauthorised by them. In actions against *T* to recover the sums the plaintiffs obtained judgment, but recovered nothing. *T* was later tried and found guilty of fraudulent conversion. On 4th and 22nd March, 1950, *T* drew two cheques, which were met, in favour of the defendant company, of which he was a director. These payments, amounting to some £6,161, came out of the funds entrusted to *T* by the plaintiffs. The plaintiffs did not learn of the payments made to the defendants until discovery was had of *T's* bank account in the course of other litigation in 1956. On 10th April, 1957, the plaintiffs' solicitors claimed from the defendants repayment of the said sum, and on 2nd May, 1957, a writ was issued. The statement of claim alleged (1) that *T* had fraudulently and in breach of trust paid the moneys to the defendants, who had knowledge of the fraud through *T* their director and were consequently trustees for the plaintiffs; (2) that the plaintiffs had lawfully demanded payment of the moneys from the defendants, who wrongfully retained the same. They claimed repayment of the moneys: (1) as money had and received to their use; alternatively, (2) as damages for money wrongfully detained or converted; and (3) "as the plaintiffs' money traceable in equity." By their defence, the defendants (1) admitted the payments, but did not admit that they were made fraudulently or in breach of trust; if they were so made the defendants had no knowledge and were not trustees; (2) admitted the demand for the money but denied that its retention was wrongful; (3) pleaded the Limitation Act, 1939; (4) alleged that the statement of claim disclosed no claim in equity. At the hearing before Danckwerts, J., the plaintiffs argued their case on the equitable claim not only as a claim *in rem* against traceable assets, but as one *in personam* (based on *Nelson* v. *Larholt* [1948] 1 K.B. 339). The defendants then applied to amend their defence by pleading that the cheques in question had been received for value; this application was refused. Danckwerts, J., said that the claim as formulated at trial involved tracing the money into the hands of the defendants, irrespective of whether they had retained it or not, a claim founded in *In re Diplock* [1948] Ch. 465, and observations of Denning, J., in *Nelson* v. *Larholt, supra*. To meet such a claim the defendants must establish that they had acted innocently and *bona fide* and were purchasers for value without notice. That they were *bona fide* recipients without notice had been established, but in their defence they did not allege that they had given value, and it would not be proper to allow such an amendment at the hearing. Consequently, unless they could establish a defence under the Limitation Act, 1939, there was no answer to the plaintiffs' claim. On a consideration of ss. 19 and 26 of the Act, it appeared that either no limitation was applicable or else six years had not run since the fraud had been discovered by the plaintiffs. Consequently, this defence failed also, and there must be judgment for the plaintiffs. The defendants appealed on the ground, *inter alia*, that Danckwerts, J., had been wrong in refusing to allow the amendment. The court intimated that the defendants should elect whether to argue on the pleadings as they stood, or to apply for leave to amend; the defendants adopted the latter course.

JENKINS, L.J., said that from the statement of claim one would naturally deduce a claim in the long-established form to trace *in rem* on the footing that the money was still in the defendants' hands; it would not readily be appreciated that the plaintiffs would seek to rely on the personal liability in equity held to exist in *In re Diplock, supra*, and *Nelson* v. *Larholt, supra*; in such a case it was vital for the defence to raise a case of purchaser for value without notice, and the judge had held that it was too late to amend at trial. The omission in the defence had been contributed to in a substantial degree by the obscurity of the statement of claim. Order 28, r. 1, provided that "all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties." The pleadings as they stood were not so framed, and had no relation to any remotely probable state of facts; it was most improbable that the money should be now identifiable in the hands of the defendants, or that the cheques were handed over by *T* without some form of consideration. The principles applicable were laid down in *Tildesley* v. *Harper* (1876), 10 Ch. D. 393, noted in the Annual Practice under Ord. 28, r. 1. The judge had acted on a wrong principle in refusing an amendment which would have allowed the true issue to be determined, and although the court was always slow to interfere with a judge's discretion in such a case, the appeal must be allowed so far as the refusal to allow an amendment was concerned. The case must go back for a new trial with liberty to both parties to amend as advised.

ROMER, L.J., agreed.

WILLMER, L.J., agreeing, said that when an appellant sought to amend a pleading, the provisions of Ord. 58, r. 3 (2), required that the proposed amendment should be formulated in the notice of appeal. Appeal allowed.

APPEARANCES: *Geoffrey Cross*, Q.C., and *C. A. Settle* (*Alfred Neale & Co.*); *N. McKinnon*, Q.C., and *M. O. Stranders* (*Bell and Ackroyd*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law] **[1 W.L.R. 1216**

Chancery Division

GIFT OF DWELLING-HOUSE FOR CHILDREN'S HOME AND OF FUND FOR CHILDREN IN HOME: WHETHER VALID CHARITABLE GIFTS: ALTERNATIVE GIFT SHOULD CHILDREN'S HOME BE DISCONTINUED

***In re* Sahal's Will Trusts; Alliance Assurance Co., Ltd. *v.* A.-G. and Others**

Danckwerts, J. 30th October, 1958

Adjourned summons.

By cl. 8 (i) of his will a testator devised his dwelling-house to the *S* Corporation "on trust to use and maintain the same as a children's home," and by cl. 8 (iii) he bequeathed to the corporation the sum of £2,000 on trust to invest the same and apply the annual income therefrom "for the benefit of such one or more of the children for the time being resident in the house," at the corporation's discretion. Clause 8 (iv) provided that, if at any time "the corporation shall discontinue the use of the said dwelling-house" as a children's home, then the house should be held on trust to use and maintain it as "a hostel for young soldiers, sailors, airmen or merchant seamen or for poor, aged and infirm people of the neighbourhood," the fund to be applied "in purchasing extra comforts for the residents in such hostel." The corporation had power to establish and maintain homes for the reception and care of children in need of care and protection and hostels for poor, aged and infirm people. They considered that there was need for a hostel of the latter kind in the district and that the house was suitable for it. The trustee of the will took out a summons to determine, *inter alia*, whether the trusts contained in cl. 8 concerning the house and money were valid charitable trusts and whether the corporation could hold and apply the trust property in accordance with cl. 8 (iv) without having first held and applied it in accordance with cl. 8 (i).

DANCKWERTS, J., said that the home the testator desired to found was of a similar nature to that which was the subject of the bequest in *In re Cole; Westminster Bank, Ltd.* v. *Moore* [1958]

3 W.L.R. 447; *ante*, p. 618, which the majority of the Court of Appeal held was not a valid charitable trust. The reasons for that conclusion appeared to be that funds applied for the purpose of supplying any sort of amenity in these homes without apparently being necessarily amenities essential to the welfare of the children involved a perpetuity, and the purpose was not to be regarded as charitable. The Court of Appeal left open the case of a gift for the maintenance or endowment of a house of this kind and also the question of a gift for the purpose of founding a home of this kind for these types of children, and therefore the general gift in cl. 8 (i) of the will was not covered by that decision. On general grounds that gift was a gift for a class of persons which the ambit of charity covered and, therefore, the gift of the house for the purpose of founding a children's home was a valid charitable gift. But as to the fund, his lordship was unable to distinguish the terms of the gift in cl. 8 (iii) from those of the gift in *In re Cole, supra*, and accordingly the gift of the fund was not a valid charitable gift. As to the effect of cl. 8 (iv) of the will, the testator was really giving an alternative trust subject to the primary trust in cl. 8 (i); it would be absurd to require the corporation to construct a home for perhaps one day and then abandon it and turn to the alternative trust. Therefore it was unnecessary for the home ever to have been brought into being and that trust was now valid. The purposes were charitable, being within the general terms of the preamble to the Statute of Elizabeth and accordingly the gift of the dwelling-house in cl. 8 (iv) was a valid charitable gift. The position as regards the fund was not the same, because it was not held on charitable purposes in the first instance and therefore suffered from the prohibition against perpetuities and the alternative gift in cl. 8 (iv) failed as well. Accordingly the corporation were entitled to accept the gift of the house for the purposes of a home for aged and infirm people in the neighbourhood, but the gift of the fund failed. Declaration accordingly.

APPEARANCES: *J. A. Wolfe* (*Skelton & Co.*, Manchester); *Denys Buckley* (*Treasury Solicitor*); *H. C. Easton* (*R. Ribblesdale Thornton*, Salford); *John Brunyate* (*Treasury Solicitor*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[1 W.L.R. 1243**

COSTS: TAXATION: COMPULSORY WINDING UP: WORK DONE IN CONTEMPLATION OF LEGAL PROCEEDINGS

In re Simpkin Marshall, Ltd.

Wynn Parry, J. 30th October, 1958

Summons to review taxation.

In the course of the compulsory winding up of a company, solicitors were required by the liquidator to prepare cases for counsel to advise (*a*) as to whether certain misfeasance proceedings should be taken, and (*b*) as to the recoverability of certain debts owing to the company. In the event, no proceedings were taken under either head. The solicitors, treating the business as non-contentious, delivered a lump sum bill. The taxing master accepted the view that the business was non-contentious and taxed the bill under Sched. II to the Solicitors' Remuneration Order, 1883 (as amended by the Solicitors' Remuneration Order, 1953). The liquidator brought in objections to the basis of taxation contending that the business was contentious business; in his objections he stated: "It is understood that the practice had always been to tax the costs of solicitors employed by the liquidator in a compulsory winding up in accordance with Ord. 65, r. 8, which provides that in 'causes and matters . . . solicitors shall be entitled to charge . . . the fees set forth in App. N.' Only the costs of conveyancing business have been taxed under the General Order . . ." The taxing master overruled the objections and the liquidator sought a review of the taxation.

WYNN PARRY, J., reading his judgment, said that the definition of contentious business in s. 13 (4) (*a*) of the Solicitors (Amendment) Act, 1956, was very much wider in scope than the definition in s. 81 (1) of the Solicitors Act, 1932, and must include conveyancing business. The scope of the Solicitors' Remuneration Order, 1883, must therefore be treated for the future as not extending to conveyancing business done in an action. The result was that there was now a clear division between contentious and non-contentious business. All business was now to be regarded as contentious which was done before proceedings were begun, provided that it was done with a view to the proceedings being begun, and they were in fact begun, and also all business done in the course of the proceedings. All other business was non-contentious. The result of presenting a petition for the compulsory winding up of a company was that proceedings had been begun before a court, and they continued until the company was finally dissolved. The word "proceedings" in s. 237 of the Companies Act, 1948, had a wider import than the phrase "legal proceedings" and included all the steps which must be taken by the liquidator in order to achieve the winding up of the affairs of the company. If the liquidator took legal proceedings begun by writ of summons, the business which the solicitor conducted in the action was done for the purposes of the action and not for the purposes of the proceedings begun by the petition for the winding up of the company, and if he obtained advice prior to the issue of the writ, the advice was obtained for the purposes of the action and was not referable to the relief claimed in the petition. If, therefore, legal proceedings were begun, the business involved in giving or procuring the advice must be treated as contentious business, but if they were not begun then the advice must be treated as having been obtained in the course of the proceedings (using that word in its wide sense) in winding up, and must therefore be treated as non-contentious business. Was there any difference between legal proceedings begun in the course of a compulsory winding up by writ and such proceedings begun by summons entitled with the same heading as that in the petition for the compulsory winding up? His lordship could find no good ground for not applying the same reasoning to the case of advice given leading to the issue of a summons so entitled. In his view the business of giving such advice only became contentious business in such proceedings by virtue of the issue of such summons. It followed that if no such summons was issued the business of advising remained non-contentious business. His lordship added that he had found the whole matter one of great difficulty and recognised that a different view could well be entertained. Summons dismissed.

APPEARANCES: *Denys Buckley* (*Solicitor to the Board of Trade*); *E. Milner Holland*, Q.C., and *L. H. L. Cohen* (*Stafford, Clark & Co.*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[3 W.L.R. 693**

POWERS OF INVESTMENT OF STATUTORY CHARITY UNDER SPECIAL ACT OF 1850: WHETHER COURT MAY GIVE WIDER POWER

In re Shipwrecked Fishermen and Mariners' Royal Benevolent Society

Danckwerts, J. 31st October, 1958

Adjourned summons.

A charity was incorporated by an Act of Parliament of 1850. The investment of the general funds of the charity was regulated by s. 11 of that Act, the general effect of which was, at the date of the proceedings, to permit the funds to be invested in only (*a*) the mortgages of lands in fee simple or held on lease for a term of which at least sixty years remained unexpired, (*b*) stock of the public funds of the United Kingdom, and (*c*) Exchequer Bills, South Sea stock and bank stock. There had been a steady fall over the years in the value of the charity's investments which were all of a kind authorised by law for the investment of trust funds, and a decline in the value of fixed income and other trustee investments. The charity took out an originating summons for an order to be made that the charity's powers of investment be increased by way of a scheme in terms set forth in draft minutes of order annexed to the summons. The court found that s. 11 of the Act of 1850 conferred powers of investment on the charity.

DANCKWERTS, J., said that the court could not do anything inconsistent with the terms of the Act of 1850, but to allow a wider power of investment was to confer additional powers and was not, therefore, inconsistent with but was in aid of and supplemental to the powers of investment conferred by s. 11 of the Act of 1850. But his lordship preferred to deal with the matter in another way. The Trustee Act, 1925, contained powers to invest in a number of things which were outside the ambit of s. 11 of the Act of 1850, and it had been accepted that that range of investments was open to the corporation. To that extent the general Act of 1925 had modified the provisions of the Act of 1850 and, if that were so, why was it not also modified by s. 57 of the Act of 1925? It seemed to his lordship that that section

did permit the court to allow a wider range of investments to be made and to express it in a general order. Under s. 57 (1), the court could authorise investment in a particular fund on a particular occasion and could also confer upon trustees a general power of investment. That came to the same thing as the method of a scheme. The court was being asked to do something purely in the administration of the trust. It was not altering the substantive trusts in any way, but simply giving to the trustees power to administer the funds in a more satisfactory and effective way which the changed circumstances showed to be necessary for the proper administration of the charity. Order referring to s. 57 and giving power to invest in the manner proposed by the scheme.

APPEARANCES: *G. H. Newsom*, Q.C., and *J. A. Gibson* (*Darley, Cumberland and Co.*); *Denys B. Buckley* (*Treasury Solicitor*).

[Reported by Miss J. F. LAMB, Barrister-at-Law] **[3 W.L.R. 701**

Queen's Bench Division

CRIMINAL LAW: " OFFENSIVE WEAPON ": SHEATH KNIFE

Woodward *v.* Koessler

Lord Goddard, C.J., Donovan and Ashworth, JJ.
30th July, 1958

Case stated by Reading justices.

A boy, under sixteen, was charged with having an offensive weapon, namely, a sheath knife, in a public place contrary to the Prevention of Crime Act, 1953, which by s. 1 (4) defined " offensive weapon " as " any article made or adapted for use for causing injury to the person, or intended by the person having it with him for such use by him." The boy had attempted, together with some other boys, to break into a cinema, and had been using a sheath knife to force open the door. When the caretaker came to the door, the boy, holding the knife in his hand, went up to the caretaker in a threatening manner, as if to strike him with the knife, and said: " Can you see this ? " The justices found that the knife was not an offensive weapon and dismissed the charge. The prosecution appealed.

LORD GODDARD, C.J., said that it could be said that the sheath knife was not made for the purpose of causing injury, but where the justices had gone wrong was in holding that because the boy said that he did not intend to cause injury that was conclusive. They had taken too narrow a view of the words " causing injury " because the boy obviously intended to cause injury: frightening and intimidating a person was causing injury, and the case should go back to the justices with an intimation that the case was proved.

DONOVAN, J., agreeing, said that for the purpose of ascertaining what the intention was, all one had to do was to look and see what use in fact was made of the weapon. If it was found that the person did make use of it for the purpose of causing injury, he had it with him for that purpose, and the evidence showed that the boy did have it with him for the purpose of causing injury.

ASHWORTH, J., agreed. Appeal allowed.

APPEARANCES: *Victor Durand*, Q.C., and *Gilbert Rowntree* (*Sharpe, Pritchard & Co.*, for *G. F. Darlow*, Reading); *Anthony McCowan* (*Dennis Berry*, Reading).

[Reported by Miss C. J. ELLIS, Barrister-at-Law] **[1 W.L.R. 1255**

HUSBAND AND WIFE: COURT'S JURISDICTION TO AMEND MARRIAGE REGISTER

Dinizulu *v.* A.-G. and Another

Paull, J. 28th October, 1958

Action.

The plaintiff, a British subject by birth, married a French subject in France in 1939, but retained her British nationality. In 1941 she went through a form of marriage in England with a Pole. The entry in the marriage register contained a false statement, signed by both parties, that they had been previously married in Poland in 1938. The plaintiff claimed that she was entitled to an order of mandamus directing the Registrar-General to correct or erase the entry in the register relating to the 1941 marriage.

PAULL, J., said that the word " marriage " in s. 23 of the Marriage Act, 1836, covered ceremonies of marriage even if the " marriage " was one which was null and void because the husband of one of the parties was still alive. He could not think that the registrar was acting *ultra vires* in making the entry in the register unless he knew that there was an impediment to the marriage, and there was no suggestion of that. It was argued that he (his lordship) ought to grant a mandamus ordering the Registrar-General to correct the entry by either striking it out or making an entry in the margin deleting the condition and stating that one of the parties was already married to another person. He held that the words in s. 61 of the Marriage Act, 1949, which gave the power to correct an error in the form or substance of the entry might cover a mistake in the conditions but did not cover a situation where a party wanted to strike out the entry altogether, or to make a note in the margin that the marriage was a void marriage. With regard to the argument as to correcting the register, in any event, mandamus was a discretionary remedy, and he would not exercise his discretion in favour of the plaintiff on the question of correcting the entry since she, herself, clearly consented to that entry being made. Order of mandamus refused.

APPEARANCES: *W. T. Wells*, Q.C., *F. M. Drake* and *Roland Brown* (*Spector & Spector*); *G. D. Roberts*, Q.C., *Rodger Winn* and *J. G. Hull* (*Treasury Solicitor*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law] **[1 W.L.R. 1252**

Probate, Divorce and Admiralty Division

DIVORCE: INSANITY: CARE AND TREATMENT: INCURABLE UNSOUNDNESS OF MIND

Lock *v.* Lock

Mr. Commissioner Latey, Q.C. 28th October, 1958

Petition for divorce on the ground of a wife's incurable unsoundness of mind

A husband petitioned for divorce on the ground of the incurable unsoundness of mind of the wife, who had been admitted to a mental hospital on 9th March, 1951, in pursuance of an order under s. 20 of the Lunacy Act, 1890; had become a voluntary patient on 20th March, 1951, and had remained as such ever since. The Official Solicitor, as guardian *ad litem* of the wife, by an answer filed in June, 1956, denied that the wife was incurably of unsound mind or had been continuously under care and treatment within the meaning of s. 1 (2) of the Matrimonial Causes Act, 1950. The Divorce (Insanity and Desertion) Act, 1958, became law during the pendency of the suit. At the hearing of the petition, the medical superintendent of the hospital at which the wife was a voluntary patient was unable to state that the wife was incurably of unsound mind. By the consent of both counsel, the report of a specialist who had examined the wife on behalf of the Official Solicitor was, exceptionally, admitted in evidence. This report was to the effect that the wife was incurably of unsound mind.

Mr. Commissioner LATEY, Q.C., said that it was unnecessary to consider the judicial interpretations of what constituted an order under the Lunacy and Mental Treatment Acts, 1890–1930, owing to the general definition of " care and treatment " contained in s. 1 of the Divorce (Insanity and Desertion) Act, 1958, which had been passed with the object of doing away with many of the technical bars to a divorce on the ground of incurable unsoundness of mind. In all cases of that nature, however, the court had to be assured that the patient was incurably of unsound mind within the meaning of the Matrimonial Causes Act, 1950, and usually that assurance was given by the medical superintendent of the particular hospital, or his deputy. In the present case, however, the medical superintendent at the mental hospital felt some qualms about that, having regard to the question whether a voluntary patient like the wife was necessarily of unsound mind. The point under the new Act, by which care and treatment as a voluntary patient for five years, without any certification, facilitated a divorce on the grounds of incurable unsoundness of mind, was clearly a matter of public importance. His lordship referred to the evidence of the medical superintendent, remarking that, as a voluntary patient, the wife must be considered as having, at the date of the hearing, volition to stay in or leave the institution, and to the report of the specialist deputed by the Official Solicitor to examine the wife. He stated that in all cases of this nature it must be found that the respondent was

incurably of unsound mind. There was no statutory definition of the formula " incurably of unsound mind " in the Act of 1950. When the jurisdiction started in the hands of Lord Merriman, P., he decided that it must be given a wide interpretation and decided on the facts of each case, and in *Randall* v. *Randall* [1939] P. 131 gave cogent reasons for this view. Though doctors might differ as to what constituted unsoundness of mind and whether or not it was incurable, it was for this court to follow the terminology of the statute and judicial authority thereon. On the present facts the wife was incurably of unsound mind, and having been, for upwards of five years before the petition, under care and treatment as defined in the 1958 Act, the husband was entitled to a decree *nisi* of divorce in the exercise of the court's discretion. It was not customary for the report of the specialist deputed on behalf of the Official Solicitor to examine the patient to be put in evidence, but in view of the fact that the present case was the first case which fell to be decided under the new Act, and owing to the peculiar circumstances, he (his lordship) thought it right to see that report and, indeed, to strengthen the judgment with its contents.

APPEARANCES: *Roger Ormrod*, Q.C. (*Gregory, Rowcliffe & Co.*, for *Risdon, Weston, Witham & Hancock*, Taunton); *James Comyn* (*Official Solicitor*).

[Reported by Miss ELAINE JONES, Barrister-at-Law] **[1 W.L.R. 1248**

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time:—

Armed Forces (Housing Loans) Bill [H.C.] [26th November.

Development of Inventions Bill [H.C.] [26th November.

Post Office Works Bill [H.L.] [25th November.

To vest in the Postmaster General certain underground works constructed in London, Manchester and Birmingham in the exercise of emergency powers; and for purposes connected therewith.

Representation of the People (Amendment) Bill [H.C.] [26th November.

Read Second Time:—

County Courts Bill [H.L.] [27th November.

Expiring Laws Continuance Bill [H.C.] [27th November.

Read Third Time:—

Agricultural Mortgage Corporation Bill [H.C.] [27th November.

Glasgow Corporation Order Confirmation Bill [H.C.] [26th November.

Wages Councils (Amendment) Bill [H.L.] [25th November.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Church of Scotland Trust Order Confirmation Bill [H.C.] [25th November.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to the Church of Scotland Trust.

Edinburgh Corporation Order Confirmation Bill [H.C.] [26th November.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to Edinburgh Corporation.

North of Scotland Electricity Order Confirmation Bill [H.C.] [26th November.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to North of Scotland Electricity.

Society in Scotland for Propagating Christian Knowledge Order Confirmation Bill [H.C.] [25th November.

To confirm a Provisional Order under the Private Legislation Procedure (Scotland) Act, 1936, relating to the Society in Scotland for Propagating Christian Knowledge.

Read Second Time:—

Building (Scotland) Bill [H.C.] [24th November.

Family Allowances and National Insurance Bill [H.C.] [28th November.

Intestate Husband's Estate (Scotland) Bill [H.C.] [28th November.

Marriage (Secretaries of Synagogues) Bill [H.C.] [28th November.

To amend the definition of " Secretary of a synagogue " in section sixty-seven of the Marriage Act, 1949.

Navy, Army and Air Force Reserves Bill [H.C.] [24th November.

Sea Fisheries (Scotland) Bill [H.C.] [28th November.

Wills, &c. (Publication) Bill [H.C.] [28th November.

B. QUESTIONS

RENT ACT (CERTIFICATES OF DISREPAIR)

Mr. H. BROOKE said that a tenant of controlled property could serve notice on Form G if ever the premises fell into disrepair, and could then obtain a certificate of disrepair if the landlord did not do the work or undertake to do it. [25th November.

DIVORCE LAW

The ATTORNEY-GENERAL said that he did not think that there was any need to amend the law by seeking to specify what acts constituted cruelty for the purposes of the law of divorce or by making express provision to enable marriages to be dissolved on the ground that a spouse had changed his or her sex. He was not aware of any legal difficulties arising out of *Dolling* v. *Dolling*, in which the Court of Appeal had held on the particular facts that the conduct of the respondent had not amounted to cruelty. [25th November.

MAINTENANCE ORDERS ACT, 1958

Mr. R. A. BUTLER said that he proposed to appoint a day (which he hoped would be early in the New Year) for the Maintenance Orders Act, 1958, to come into operation as soon as the necessary Rules of Court had been made. Supreme Court, County Court and Magistrates' Court Rules would be submitted to the appropriate committees shortly. [27th November.

PROBATION SERVICE

Mr. R. A. BUTLER said that since the Departmental Committee on the Social Services in Courts of Summary Jurisdiction reported in 1936, the additional statutory duties shown below had been assigned to probation officers. All these duties, except that last-mentioned, were already being performed by probation officers to a greater or less extent before 1936.

Summary Procedure (*Domestic Proceedings*) *Act*, 1937

Conciliation in domestic proceedings and investigation of the means of parties in domestic and bastardy cases.

Criminal Justice Act, 1948

1. After-care of persons released from prisons, Borstal institutions, approved schools and detention centres.

2. The duty of inquiry into the circumstances of persons before the courts was somewhat extended.

Matrimonial Proceedings (*Children*) *Act*, 1958

Supervision of children of divorced parents, as ordered by the court. [27th November.

STATUTORY INSTRUMENTS

Abstract of Education Account (Revocation) Regulations, 1958. (S.I. 1958 No. 1927.) 4d.

Alkali, etc., Works (Scotland) Order, 1958. (S.I. 1958 No. 1932 (S.105).) 5d.

Clean Air Act, 1956 (Appointed Day No. 2) (Scotland) Order, 1958. (S.I. 1958 No. 1931 (C.11) (S.104).) 4d.

Draft **Coal and Other Mines** (Mechanics and Electricians) (Variation) (No. 2) Regulations, 1958. 5d.

Draft **Coal Industry** Nationalisation (Borrowing Powers) Order, 1958. 5d.

Dark Smoke (Permitted Periods) (Scotland) Regulations, 1958. (S.I. 1958 No. 1933 (S.106).) 5d.

Dark Smoke (Permitted Periods) (Vessels) (Scotland) Regulations, 1958. (S.I. 1958 No. 1934 (S.107).) 5d.

Electricity (Consultative Council) (North of Scotland District) Regulations, 1958. (S.I. 1958 No. 1924 (S.101).) 5d.

Electricity (Consultative Council) (South of Scotland District) Regulations, 1958. (S.I. 1958 No. 1923 (S.100).) 5d.

Electricity (Superannuation Scheme) (Winding Up) (South of Scotland) Regulations, 1958. (S.I. 1958 No. 1922 (S.99).) 5d.

Emergency Laws (Continuance) Order, 1958. (S.I. 1958 No. 1961.) 4d.

Foreign Service Fees (Amendment No. 6) Order, 1958. (S.I. 1958 No. 1953.) 4d.

General Grant Order, 1958. 5d.

General Grant (Calculation) Regulations, 1958. (S.I. 1958 No. 1939.) 5d.

General Grant (Scotland) Order, 1958. 5d.

Grants and Rates (Isles of Scilly) Order, 1958. (S.I. 1958 No. 1936.) 5d.

Grants and Rates (Transitional Adjustments) Regulations, 1958. 7d.

Grey Seals Protection (Farne Islands) (Suspension of Close Season) Order, 1958. (S.I. 1958 No. 1895.) 5d.

Import Duties (Drawback) (No. 14) Order, 1958. (S.I. 1958 No. 1897.) 5d.

Import Duties (Exemptions) (No. 22) Order, 1958. (S.I. 1958 No. 1896.) 5d.

Import Duties (General) (No. 2) Order, 1958. (S.I. 1958 No. 1941.) 8d.

Local Government Commission Regulations, 1958. 5d.

Local Government (General Grant Adjustments) (Scotland) Regulations, 1958. (S.I. 1958 No. 1926 (S.103).) 5d.

Local Government (General Grant Transitional Adjustments) (Scotland) Regulations, 1958. (S.I. 1958 No. 1925 (S.102).) 5d.

London Traffic (Prescribed Routes) (Lambeth) Regulations, 1958. (S.I. 1958 No. 1963.) 4d.

London Traffic (Prescribed Routes) (St. Marylebone) Regulations, 1958. (S.I. 1958 No. 1928.) 4d.

London Traffic (Prescribed Routes) (Southwark) Regulations, 1958. (S.I. 1958 No. 1929.) 4d.

Merchant Shipping (Load Line Convention) (Ghana) Order, 1958. (S.I. 1958 No. 1959.) 4d.

Merchant Shipping (Safety Convention) (Ghana) Order, 1958. (S.I. 1958 No. 1960.) 4d.

Naval Discipline Act, 1957 (Commencement) Order, 1958. (S.I. 1958 No. 1952 (C.12).) 4d.

This order appoints 1st January, 1959, for the coming into operation of the Naval Discipline Act, 1957.

Nigeria (Constitution) (Amendment No. 4) Order in Council, 1958. (S.I. 1958 No. 1958.) 5d.

Official Secrets (Prohibited Place) Order, 1958. (S.I. 1958 No. 1935.) 4d.

Opticians Act, 1958 (Commencement No. 1) Order, 1958. (S.I. 1958 No. 1954 (C.13).) 4d.

This order appoints 1st January, 1959, for the coming into force of ss. 1, 5, 7 (1) and (3)–(5), 8, 17–19, 25–31 and Schedule of the Opticians Act, 1958.

Pensions (India) (No. 2) Order, 1958. (S.I. 1958 No. 1938.) 5d.

Raglan–Abergavenny–Brecon–Llandovery Trunk Road (Butter Street, Glamorgan Street and Wheat Street, Brecon) Order, 1958. (S.I. 1958 No. 1930.) 5d.

Singapore (Constitution) Order in Council, 1958. (S.I. 1958 No. 1956.) 2s. 4d.

Somaliland (Electoral Provisions) Order in Council, 1958. (S.I. 1958 No. 1957.) 5d.

Stopping up of Highways (County of Bedford) (No. 8) Order, 1958. (S.I. 1958 No. 1898.) 5d.

Stopping up of Highways (County of Bedford) (No. 9) Order, 1958. (S.I. 1958 No. 1892.) 5d.

Stopping up of Highways (County of Bedford) (No. 10) Order, 1958. (S.I. 1958 No. 1893.) 5d.

Stopping up of Highways (City and County Borough of Birmingham) (No. 8) Order, 1958. (S.I. 1958 No. 1916.) 5d.

Stopping up of Highways (City and County Borough of Bristol) (No. 7) Order, 1958. (S.I. 1958 No. 1894.) 5d.

Stopping up of Highways (County of Chester) (No. 18) Order, 1958. (S.I. 1958 No. 1917.) 5d.

Stopping up of Highways (City and County Borough of Coventry) (No. 6) Order, 1958. (S.I. 1958 No. 1918.) 5d.

Stopping up of Highways (County of Denbigh) (No. 4) Order, 1958. (S.I. 1958 No. 1903.) 5d.

Stopping up of Highways (County of Derby) (No. 19) Order, 1958. (S.I. 1958 No. 1908.) 5d.

Stopping up of Highways (Kent) (No. 4) Order, 1957 (Revocation) Order, 1958. (S.I. 1958 No. 1886.) 4d.

Stopping up of Highways (County of Kent) (No. 16) Order, 1958. (S.I. 1958 No. 1919.) 5d.

Stopping up of Highways (County of Kent) (No. 17) Order, 1958. (S.I. 1958 No. 1904.) 5d.

Stopping up of Highways (London) (No. 45) Order, 1958. (S.I. 1958 No. 1905.) 5d.

Stopping up of Highways (London) (No. 46) Order, 1958. (S.I. 1958 No. 1906.) 5d.

Stopping up of Highways (London) (No. 47) Order, 1958. (S.I. 1958 No. 1899.) 5d.

Stopping up of Highways (London) (No. 48) Order, 1958. (S.I. 1958 No. 1900.) 5d.

Stopping up of Highways (London) (No. 49) Order, 1958. (S.I. 1958 No. 1890.) 5d.

Stopping up of Highways (County of Northampton) (No. 11) Order, 1958. (S.I. 1958 No. 1901.) 5d.

Stopping up of Highways (County of Nottingham) (No. 9) Order, 1958. (S.I. 1958 No. 1920.) 5d.

Stopping up of Highways (County Borough of Smethwick) (No. 1) Order, 1958. (S.I. 1958 No. 1902.) 5d.

Stopping up of Highways (County of Somerset) (No. 5) Order, 1958. (S.I. 1958 No. 1891.) 5d.

Stopping up of Highways (County of Surrey) (No. 8) Order, 1958. (S.I. 1958 No. 1907.) 5d.

Supplies and Services (Continuance) Order, 1958. (S.I. 1958 No. 1962.) 4d.

Trowbridge, Melksham and District Water Board Order, 1958. (S.I. 1958 No. 1913.) 5d.

Tuberculosis (Attested Herds) Scheme, 1958. (S.I. 1958 No. 1912.) 8d.

Wages Regulation (Cotton Waste Reclamation) (Amendment) Order, 1958. (S.I. 1958 No. 1966.) 5d.

Mr. HENRY SALT, Q.C., has been elected Treasurer of Gray's Inn for 1959, in succession to Sir John Forster, K.B.E., Q.C., who has been elected Vice-Treasurer for the same period.

Lord Birkett is to give the B.B.C. "Week's Good Cause" appeal, on behalf of the Oxford Committee for Famine Relief, on 21st December.

NOTES AND NEWS

Honours and Appointments

Mr. J. E. S. SIMON, Q.C., M.P., and Mr. J. M. G. GRIFFITH-JONES have been elected Masters of the Bench of the Middle Temple.

Personal Notes

Captain Edwin Plomley Dawes, solicitor, clerk to the Rye Magistrates, is retiring on 31st December.

Mr. Ernest W. Pettifer, who retired recently after forty-five years as magistrates' clerk to the West Riding Bench at Doncaster, was presented with a cheque by the Chairman of the Bench, Mr. F. S. Newborn.

Miscellaneous

RESIDENTIAL CARAVANS INVESTIGATION

The Minister of Housing and Local Government stated on 25th November, in answer to a written question in the House of Commons, that he was setting on foot an investigation into the nature and extent of the problems which arise in connection with caravans used as residential accommodation, the underlying causes of the problems, and the views of those concerned. Sir Arton Wilson will conduct the investigation and will begin work almost at once. The investigation is into the facts of the situation; recommendations are not asked for. In the light of the report, which will be published, the Government will reach conclusions on policy and consider whether and, if so, what amending legislation is required. Mr. A. R. Isserlis, of the Ministry of Housing and Local Government, is assisting Sir Arton, and correspondence in connection with the investigation should be addressed to him at the Ministry of Housing and Local Government, Whitehall.

The Legal & General Assurance Society Limited announces a decision by its Board of Directors that valuations and declarations of profits in respect of its life assurance, permanent sickness and capital redemption business will in future be made at triennial intervals. Bonuses will thus be declared triennially in respect of all with-profit policies effected on or after 12th May, 1954, the date when the current series of with-profit life policies started. The last valuation and declaration of profits (on the old quinquennial basis) took place as at 31st December, 1956. The next valuation will accordingly be made as at 31st December, 1959.

LOCAL GOVERNMENT COMMISSION FOR ENGLAND

The Local Government Commission for England have appointed Mr. J. D. Jones, an Under-Secretary in the Ministry of Housing and Local Government, to be the Secretary of the Commission. The Commission have been appointed under the Local Government Act, 1958, to review local government areas in England outside Greater London. In the conurbations, they will be concerned with the whole structure of local government and elsewhere with changes in the status and boundaries of administrative counties and county boroughs. They are now considering the order in which areas of the country will be comprehensively reviewed. Before deciding which parts of the country to take first, the Commission have written to local authorities asking them to say, by 16th December, whether they consider the need for review in their part of the country to be particularly urgent. Inquiries and correspondence for the Commission should be addressed to the Secretary, Local Government Commission for England, Sanctuary Buildings, 16 Great Smith Street, London, S.W.1.

The Minister of Housing and Local Government laid before Parliament on 25th November the Local Government Commission Regulations, 1958, made under s. 36 of the Local Government Act, 1958, which require an affirmative resolution in each House before they can take effect.

The President of The Law Society, Mr. Leslie E. Peppiatt, gave a luncheon party on 24th November at 60 Carey Street, London, W.C.2. The guests were: The Belgian Ambassador, the Lord Chancellor, Sir Edward Playfair, Sir Leslie Farrer, Sir Arthur fforde, Mr. R. W. Tuke, Sir Charles Norton, Mr. Ronald Long and Sir Thomas Lund.

Wills and Bequests

Mr. John Henry Boyd, solicitor, of Jesmond, left £20,594 (£20,406 net).

Mr. H. N. Lewis, solicitor, of Ascot, left £64,455 net.

Mr. Charles Reynolds Scorer, solicitor, of Lincoln, left £69,461 (£69,354 net).

OBITUARY

MR. W. H. BELLAMY

Mr. William Henry Bellamy, solicitor, of Redhill, died on 19th November, aged 82. He was admitted in 1899.

MR. G. B. COTTIER

Mr. Gerald Beaumont Cottier, solicitor, of London, W.C.1, died on 16th November, aged 68. He was admitted in 1925.

SIR R. C. DAVIES

Sir Reginald Charles Davies, solicitor, of Leeds, died on 20th November, aged 72. He was admitted in 1908, and was a member of Leeds City Council from 1923–35, becoming an alderman in 1930. He was President of the Incorporated Leeds Law Society in 1933–34. In 1935 he was elected to the board of the Leeds Permanent Building Society, and in 1940 was appointed general manager, a post from which he retired a few weeks ago. He was chairman of the Building Societies Association between 1948 and 1950. He was knighted in 1939.

MR. G. S. HAMPTON

Mr. Gerald Samuel Hampton, solicitor, of Reading, has died, aged 59. He was admitted in 1924.

MR. G. W. MASON

Mr. Guy Wilbar Mason, solicitor, of East Grinstead, has died. He was admitted in 1899.

SOCIETIES

The following programme is arranged for the SOLICITORS' ARTICLED CLERKS' SOCIETY for the period December, 1958, to January, 1959: Tuesday, 9th December, debate with the Junior Technion Society, at The Law Society's Hall. The subject will be announced later. Tuesday, 16th December, "Comedy on Record," at The Law Society's Hall. Tuesday, 6th January, new members' evening, at The Law Society's Hall. Tuesday, 13th January, theatre party at the Fortune Theatre. All those interested are invited to ring Diana Courtney at CLE 1862 (Office) or PER 0521 (Home) before 1st January. Wednesday, 28th January, first full-length play by the drama group at Royal Scottish Corporation, Fleur-de-Lys Court, Fetter Lane, London, E.C.4.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertising Offices: Oyez House, Breams Buildings, Fetter Lane, London, E.C.4. Telephone: CHAncery 6855.

Annual Subscription: Inland £4 10s., Overseas £5 (payable yearly, half-yearly or quarterly in advance).

Advertisements must be received first post Wednesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).